

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK07-81447-TJM
))
KULUVAR REALTY ENTERPRISES, LLC,) CH. 11
))
Debtor(s)))

ORDER

Hearing was held in Omaha, Nebraska, on April 7, 2008, regarding Filing No. 34, Motion to Dismiss, or in the Alternative, Convert to a Case Under Chapter 7, filed by TierOne Bank, and Filing No. 39, Objection, filed by debtor. Patrick Turner appeared for the debtor and Joseph H. Badami appeared for TierOne Bank.

TierOne Bank, a creditor with a deed of trust on improved real property owned by the debtor in Omaha, Nebraska, has filed a motion to dismiss the case, or in the alternative, convert to a case under Chapter 7. This case was filed in July of 2007. The monthly operating reports through December 2007 showed no income. The monthly operating reports for January and February 2008, which are not in the appropriate format, and which are simply bank statements, do not show sufficient income or cash deposits to enable the debtor to make adequate protection payments to the movant equal to non-default interest on the debt. However, the debtor, in February and March 2008, did make the adequate protection payments.

The motion to dismiss is granted for cause. The bankruptcy code at 11U.S.C. § 1112(b)(4)(A) defines the term "cause" as including substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.

In this case, TierOne Bank, which is owed more than \$400,000, has received no payments from January of 2007 until the adequate protection payments were made in February and March of 2008. Therefore, beginning with the petition date up to and including the end of January 2008, there was a continuing loss to the estate by virtue of the accruing interest on the TierOne Bank loan. The absence of a reasonable likelihood of rehabilitation is shown by the fact that there has been no income generated by this debtor and the deposits that are shown in the January and February operating statements are insignificant with regard to the amount which will be necessary to pay the ongoing TierOne Bank obligation.

At the hearing on the motion, counsel for the debtor suggested that there is a possibility that the debtor will be able to sell the real property which is the subject of the bank's loan, and requested 45 days to do so. That request is denied. The debtor has been unable to generate sufficient revenue to pay the TierOne Bank loan payments for well over a year. The debtor has had more than eight months to generate a sale of the building and there is no evidence that a sale is pending or that the property is listed for sale.

Dismissal will allow this creditor and the only other creditor in this case to proceed with liquidation of their collateral.

IT IS ORDERED that Filing No. 34, Motion to Dismiss, is granted, and the case is dismissed for cause.

DATED: April 8, 2008

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

Patrick Turner
*Joseph H. Badami
Kathleen Laughlin
U.S. Trustee

Movant (*) is responsible for giving notice to other parties if required by rule or statute.